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ABSTRACT

This bulletin provides an overview of the legal principles governing the liability of school personnel for student injuries that occur off school property. A number of specific court cases are cited to illustrate the various factors and relationships that the courts have considered significant in such cases. Examples are given of cases involving accidents on field trips, transportation accidents of various types, injuries incurred while students were on errands for school personnel, and injuries resulting from class assignments. Several general questions that the law and the courts regard as fundamental in school liability cases are offered to guide educators in judging their legal responsibility in specific situations. (JG)

A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS

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RESPONSIBILITIES FOR STUDENT INJURY OCCURRING OFF SCHOOL PROPERTY

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A growing number of educational programs that permit secondary and even intermediate school pupils to pursue their educations away from the school building have been initiated in recent years. Work-study programs, "schools without walls," and even research projects undertaken in a more traditional school may take students into places far removed from the school building while directly or indirectly pursuing school-related assignments.

In other school systems, even where the instruction takes place on school property, students are given the freedom to leave the school for lunch or other purposes.

Principals aware of their responsibilities for students within their buildings have begun to wonder about their responsibility for students when they are away from the school. And is there a difference between the student injured while pursuing a directly related activity like a vocational work program at a construction site, or a study of social problems in an inner-city neighborhood, and the one who is merely eating lunch at a restaurant across the street from the school? What of the cheerleaders or the debate team, on the way to a game or contest in their own cars? In a school bus? What of school newspaper editors on their way to proofread last minute copy at the printers on the other side of town?

All of these questions--and many others--can cause many a sleepless night for principals in these times when students have their minds on independence--and parents have their minds on litigation. Some of these situations have given rise to very few reported cases as yet. To find answers, it is often necessary to look, therefore, at other circumstances in which injury has occurred to students away from school property, and the general law relating to liability of school personnel for injury to students.

The General Rules Governing Liability

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While cases in this Memorandum will be discussed in specific factual categories, it must be remembered that the law is more concerned with the presence or absence of certain factors and relationships that have no necessary connection with circumstances such as the time or place where an injury occurs. Without attempting a review of the basic principles of negligence law (See January 1975 Legal Memorandum: "Negligence--When is the Principal Liable?"), we would caution educators to keep in mind the questions that the law and the courts regard as fundamental:

1. Was there a duty or obligation owed the injured person?

   In Coates v. Tacoma School District[1] the school was not held liable to a student injured in an automobile accident in connection with a club initiation far from the school premises. The location where the injury occurred was considered by the court, but the more important factor in absolving the school from liability was the finding that the club was not an official school activity. The school was not found to be involved in any way with the initiation, and the school therefore owed no duty to the student.

2. If a duty existed, was there a breach of that duty?

   To answer this question, the court will usually ask: (a) Was "due care" exercised? For principals this usually means, "Was adequate supervision provided for?" (b) Was the injury foreseeable?

3. Finally, was the action or omission of the person accused of negligence the proximate cause of the injury? Would the injury have occurred regardless of the accused actions?

Field Trips

The situation giving rise to the largest number of liability actions against educators for injury away from the school is probably the field trip.

One recent case which raised most of the fundamental issues was that of Mancha v. Field Museum of Natural History et al.[2] A group of 50 seventh-grade students were taken to the museum under the supervision of two teachers. The students were permitted to visit exhibits in small groups while the teachers waited in a central entry area. Although the students were cautioned to stay in certain galleries, one group wandered into a more remote area where they were attacked by a group of older boys not connected with their school. In the melee, one student was singled out and severely beaten before a museum guard arrived and chased the attackers off.

The suit charged, among other things, that the conduct of the teachers in allowing students to visit galleries without supervision was negligence. In dismissing the case against the teachers, the court held that the attack in the museum was not reasonably foreseeable, nor was it reasonable to expect the teachers to have kept the entire group under constant surveillance. The court said nothing about the adequacy of supervision of two teachers for 50 students.

In Morris v. Douglas County S.D. No. 9[3] a group of six-year old children was taken to an ocean beach. Several children were permitted to stand on a log, in order to take their photographs. Before the picture could be taken, a wave moved the log, which then rolled over one of the children, injuring him. The group of 35 children

1. 347 P 2d 1093, (Wash. 1960)
2. 283 NE 2d 899, (Ill. 1972)
3. 403 P 2d 775, (Ore. 1965)

was supervised by only one teacher, but she was assisted by six adults, including the injured child's mother. Despite the relatively higher ratio of adults to children than in the previous case, the court found negligence on the part of the teacher.

Cox v. Barnes[4] also involved a class outing, this time by the senior class of a high school. While it was not an official school trip, the principal advised the class officers who planned the trip that they would have to take adult chaperones, at least one an expert swimmer, since swimming in the lake was anticipated. These conditions were met and verified by the principal.

At the outing, a number of students did go swimming, and one drowned. In an action by his parents against the principal as well as the teachers who were present as chaperones, the court directed a verdict for the principal on the ground that the principal had exercised reasonable care in his provisions for supervision. (See January 1975 Legal Memorandum, p. 5, for court's statement on the principal's responsibility in this case.)

Transportation Accidents

Another relatively large group of cases involving injury occurring to students away from school property arises from travel accidents during school-related trips. School bus accidents have themselves given rise to many lawsuits, but most of them deal with the home-to-school trip. Special principles of law, and sometimes even specific statutes, have been developed to deal with these kinds of situations. Accidents occurring on trips other than between home and school are more often treated under the usual rules for establishing liability even if a school bus is involved. If so, the standard applied will be that of "ordinary and reasonable" care, rather than the "extraordinary and highest" care standards often applied to the commuter trip, in recognition that special trips are not routine, and rarely required.[5]

In a typical case, Adams v. Kline,[6] part of a college soccer team travelled to an out-of-town game in a small school-owned van driven by one of the students. After an accident in which the student driver was injured, he sued the school and the coach for providing a vehicle with defective brakes.

The court held that this allegation, if true, might constitute a valid claim against the school and the coach who organized the trip under a duty to exercise due care. But the coach's duty would not include inspecting the brakes, nor testing the vehicle provided by the school. He would only be liable for defects of which he had actual knowledge or which were apparent. In the absence of such knowledge, he was held to be free of liability.

Often secondary school students attend school functions in private vehicles, especially in connection with interscholastic competition in sports and other activ-

4. 469 SW 2d 61 (Ky. 1971)
5. 34 ALR 3d 1210 (Note Sec. 2)
6. 239 A2d 230 (Del. 1968)

ities. Loaning a car for such purposes can be dangerous in that many courts will hold the owner of the vehicle to be liable for negligence resulting in injury, even if he is not driving the car himself. These decisions are based on the presumption that the person driving the car is acting as an agent for the owner. Gorton v. Doty.[7]

A teacher or administrator may also be liable for injury to students driving in another student's car. In Hanson v. Reedley Joint Union H.S.D.,[8] for example, a physical education teacher was held liable for such an injury, irrespective of whether he had specific authority to provide such special transportation. The court found that when the teacher undertook to provide the transportation in order to conduct his tennis class, he assumed a duty to exercise reasonable care in doing so.

Errands

Another kind of activity which has historically given rise to litigation for personal injury involves engaging students in performing some kind of errand at the request of school personnel. One of the issues courts look at in these cases is the purpose of the errand, and for whose benefit it was undertaken.

Where a student is sent by an educator for his own personal benefit or for that of others, the educator is more likely to be held liable for injury if negligence is proven than if the errand were primarily for the student's benefit. In McMullen v. Ursuline Order of Sisters,[9] for example, a private school student 17 years of age was injured when a ledge caved in upon him while he was mining shale for use in a construction project of the school. The school had made no attempt to ascertain whether the mining work could be done safely, and did not provide supervision for it. The negligence of the school and the teacher who authorized the work was a proper question for the jury.

It should be remembered, however, that even if the errand is undertaken at the request of, and for the benefit of the school, liability will not be assigned unless the elements required for negligence are present. Thus in Harrison v. Caddo Parish S.B.[10] charges against the defendant school board for sending a student on an errand by automobile were dismissed because the errand was not connected with any legal obligation of the school.

Lehmuth v. Long Beach Unified S.D.[11] raised the question of a school's responsibility for students using school property on the public streets. Two students were injured when a disabled sound truck they were operating for a school organization broke loose from the car towing it. Tow chains, which might have prevented the injuries, were in the truck but were not used. The students in charge of the truck testified that they had never been instructed in the use of the chains, nor told of the statutory

7. 69 P 2d 136 (Idaho 1937)
8. 111 P 2d 415 (Cal. 1941)
9. 246 P 2d 1052 (N.M. 1952)
10. 179 So 2d 926 (aff. dismissal) (La. 1965) writ refused 181 So 2d 399 (La. 1965)
11. 348 P 2d 887 (Cal. 1960)

requirement for their use. The school was held to be negligent; its failure to instruct properly the student operators of the sound truck about the tow chains was a breach of its duty to the students, and the proximate cause of the injury.

When students are injured on the public streets in circumstances in which no school purpose was involved in the student's presence there, except that he was returning home, liability is less likely to be attached to the school, as no duty may be found to exist. Gilbert v. Sacramento Unified S.D.[12]

Injuries Resulting from Class Assignments

A number of cases have arisen over the years involving students injured off school property, and outside of school-supervised situations, but in connection with class assignments.

In Calandri v. Ione Unified S.D.[13] a student nearly 15 years old made a toy cannon as a shop project, and took it home where he was injured when the cannon went off while he was loading it. Subsequent legal action alleged that the teacher's failure to warn the student of dangers involved in loading and firing the cannon constituted an absence of due care, and consequent negligence by the school district. Although the case was remanded for determination of other issues, the court agreed with the student's contention that failure to give appropriate warning might constitute negligence by the school.

In Weber v. State[14] the state of New York was held liable for injuries to a 19-year-old student who fell off a scaffold while working on a private house being built on land and with materials donated by the owner as part of a carpentry class offered by a state agricultural and technical institute. A state statute required anyone employing or directing the employment of persons engaged in construction to provide certain guard rails on scaffolding. The duty of the school to comply with this statute was declared to be absolute by the court, and its failure to do so therefore imposed strict liability upon the state as a matter of law.

Finally, in Grover v. San Mateo Junior College District,[15] where a student at a public junior college was seriously injured in an airplane crash while taking a flying lesson, the school was found liable for the instructor's negligence even though he was a private contractor, because he was engaged as an employee of the school while teaching its flying course.

Conclusions

Because liability for negligence by school personnel is not based on the location in which an injury occurs, it is not possible to find or state a clear legal rule or principle governing such cases. Also, as the cases indicate, there may be

12. 65 Cal. Rptr. 913
13. 219 Cal. App. 2d 542, 33 Cal. Rptr. 333
14. 53 NYS 2d 598 (1945; Ct. of Cl.)
15. 303 P 2d 602 (1956)

special statutes or common law rules applying to many situations. A few conclusions can be drawn, however, from the law pertaining to liability for negligence by school administrators generally, and from cases in which injuries have occurred to students while away from the school:

1. The exercise of due care requires an administrator to attempt to foresee dangers to students in his charge and to take whatever precautions seem reasonable to avoid them.

2. Specifically, an administrator is expected to establish rules for the guidance of his staff, and to assign adequate supervision for any student activity, but the school and its staff are not expected to be an insurer of the health and safety of their students.

3. The greater the possibility of injury, the greater the efforts which should be made to assure student safety.

4. The closer the relationship of a student activity to the purposes and educational program of the school, the more likely a principal or other administrator is to be held accountable to the students for their well-being.

5. In circumstances where supervision and control of student welfare is unfeasible, extra care should be taken to assure that the circumstances into which the student is placed are not fraught with inherent dangers. Any necessary risks should be brought to the attention of both the student and his parents in advance.

6. The degree of care required, and the consequent amount of supervision expected increases as the age and maturity of the students involved decrease.

7. The location in which a student is injured is only one factor in the consideration of whether there was negligence and consequent legal liability on the part of a principal or other educator.

One recent case may serve as a summary of the principles involved. In Caltavuturo v. City of Passaic[16] a child was injured while crawling through a broken fence on a playground adjacent to the school property. The injured child was only one of a number who used the broken part of the fence as a means of reaching and going home from the school each day. Even though the fence was not on school property, and the injury occurred during the lunch hour when teachers were not normally assigned to supervise the playground, the court held that the school administrators would be liable, where it could be shown that they knew, or should have known, of the dangerous conditions of the fence and of the passage through it by the children on their way to and from the school, and failed to take action to see that the condition was corrected.

16. 307 A 2d 114 (N.J. App. Div., 1973)

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